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05/07/2007 14:58 FAX 925 335 1888

STEPHAN C WILLIAMS  
CONTRA COSTA CTY COUNSEL

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002

1 SILVANO B. MARCHESI (SBN 42965)  
County Counsel  
2 JANET L. HOLMES (SBN 107639)  
Assistant County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 335-1866  
E-mail: Jholm@cc.cccounty.us

6 Attorneys for Defendants  
7 CONTRA COSTA COUNTY and  
JANA DRAZICH  
8

E-filing

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 AURELIA BARCH,  
14 Plaintiff,

15 v.

16 CONTRA COSTA COUNTY  
(Mental Health Division);  
17 JANA DRAZICH, an individual  
18 and DOES 1 through 5, inclusive,  
19 Defendants.

No. C 05 -02461 (EMC)

STIPULATION AND REQUEST FOR  
DISMISSAL AND ~~[PROPOSED]~~ ORDER  
OF DISMISSAL.

20 IT IS HEREBY STIPULATED BY AND THROUGH COUNSEL FOR ALL  
21 PARTIES:

22 The parties have entered into a settlement agreement, as reflected in the Release and  
23 Settlement Agreement, a copy of which is attached hereto as Exhibit A.

24 The Release and Settlement Agreement resolves all issues presented in the action  
25 identified in the caption above.

26 THEREFORE, Plaintiff and Defendants, by and through their counsel, hereby request  
27 that this court dismiss the above-referenced action forthwith, each side to bear its own costs  
28

STIPULATION AND REQUEST FOR DISMISSAL AND [PROPOSED] ORDER OF  
DISMISSAL - C 05 -02461 (EMC)

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CONTRA COSTA CTY COUNSEL

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1 and attorneys' fees.

2

3 DATED: March 7, 2007

4

SILVANO B. MARCHESI, County Counsel

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By: 

6

JANET D. HOLMES  
Deputy County Counsel  
Attorneys for Defendant  
CONTRA COSTA COUNTY

7

8 DATED: MAY 6, 2007

9

10

By: 

11

STEPHAN C. WILLIAMS  
Counsel for Plaintiff  
AURELIA BARCH

12

13

14 ORDER OF DISMISSAL

15

15 GOOD CAUSE APPEARING THEREFORE, and based on the Release and Settlement

16

16 Agreement executed by the parties, this action is hereby dismissed.

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17

18 Dated: May 10, 2007

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19

  
EDWARD M. CHEN  
MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT

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STIPULATION AND REQUEST FOR DISMISSAL AND [PROPOSED] ORDER OF  
DISMISSAL - C 05 -02461 (EMC)

**RECEIVED**

MAR 12 2007

COUNTY COUNSEL  
MARTINEZ, CALIF.

RELEASE AND SETTLEMENT AGREEMENT

*AURELIA BARCH v. COUNTY OF CONTRA COSTA, ET AL.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. C 05 2461 (EMC)

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement is entered into as of March 20, 2007, and is made by and between the Plaintiff Aurelia Barch (“Barch”) and Contra Costa County (“County”).

A. RECITALS

WHEREAS the Action, defined in Paragraph B(1), below, has been filed and claims have been asserted against the County for damages arising out of Barch’s employment and the County’s failure to pass Barch on probation for promotion to Accountant III in 2004;

WHEREAS the County and Barch wish to terminate this action by settlement and release of claims

NOW THEREFORE, for good and valuable consideration, it is hereby agreed as follows:

B. DEFINITIONS

1. “Action” means and refers to the action known as *Aurelia Barch v. County of Contra Costa, et al.*, United States District Court Case No. C 05 2461 (EMC).
2. “Agreement” means this Release and Settlement Agreement.
3. “County” means Contra Costa County, a political subdivision of the State of California.
4. “Court” means and refers to the Contra Costa County Superior Court.
5. “Parties” means the County, the Released Parties, and Barch.
6. “Person” means and refers to any individual, minor, proprietorship, corporation, partnership, association, trust, public entity, or any other type of legal entity

with the capacity to sue or be sued in any proceeding of any type whatever.

7. "Released Claims" means all claims of any kind released by Barch in Paragraph F(1) of this Agreement

8. "Released Parties" means the County, its Departments (including but not limited to the Health Services Department of Contra Costa County), Boards, officials, officers, agents, attorneys, representatives, contractors, and employees (including but not limited to Jana Drazich), and their successors, heirs, attorneys, agents, assigns, or employees, and any other Person or Persons for whose actions or omissions the County may be legally responsible.

9. "Stipulation" means the Request for Dismissal in the form attached hereto as Exhibit A.

#### C. SCOPE OF AGREEMENT AND CONTINUING JURISDICTION

1. Scope of Agreement. This Agreement settles all claims for damages, equitable relief, costs, attorney fees, and any other form of relief that was claimed or could have been claimed in the Action.

2. Jurisdiction. The Court has, and shall continue to have, jurisdiction to make any orders as may be proper and necessary to effectuate, and enforce, on a continuing basis, the terms and conditions of this Agreement.

#### D. SETTLEMENT TERMS

1. Payment. Within 10 days of the full execution of this Agreement and the filing of the Stipulation, the County shall pay Barch the sum of Eighty-five Thousand dollars and no cents (\$85,000.00) by check payable to "Aurelia Barch and her attorney, Stephan Williams." The check shall be delivered to the office of Barch's attorney by first class mail, or other method agreed to by both counsel.

2. Barch shall remain on unpaid administrative leave, with the County paying the employer portion, and Barch paying the employee portion, of all health care benefits costs, until she resigns her employment no later than February 14, 2008. Barch is permitted to apply, at her discretion, for disability retirement (either service-connected or non-service connected) or regular retirement, so long as the retirement election and decision is effected before February 14, 2008.

3. Barch is responsible for any liens of any kind related to the matters asserted in the action.

#### E. ATTORNEY'S FEES AND COSTS

Barch specifically agrees that by executing this Agreement and accepting payment under this Agreement, in addition to and not in derogation of any other release given under this Agreement, she releases all claims for attorney fees, costs, and any other expenses of claims, suits or litigation whatsoever arising out of or relating to the Action.

#### F. RELEASE OF CLAIMS

1. Release. Barch hereby releases and forever discharges the County and the Released Parties from any and all actions, suits at law or in equity, litigation, claims, demands or damages, of whatsoever kind or nature, including but not limited to attorney fees and costs, whether or not known, suspected or claimed, which Barch ever raised in this Action or could have raised in this Action, which he had or may have by reason of any act, omission or occurrence in any manner relating to, concerning or arising out of any act or omission by the County or the Released Parties.

2. Civil Code Section 1542. **To the fullest extent permitted by law, Barch waives any and all rights or benefits she has or may have under Section 1542 of the California Civil Code, or any comparable provision of state or federal law,**

with regard to the Released Claims. Section 1542 provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his agreement with the debtor.**

Barch acknowledges that she is aware that she may hereafter discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, the Released Parties, or the subject matter of this Agreement. Barch acknowledges that she intends to and does fully, finally and forever settle and release by this Agreement any and all claims described herein, without regard to the subsequent discovery or existence of such different or additional facts.

3. Warranty re Transfer of Claims. Barch warrants that she has made no assignment, transfer, conveyance or other disposition of any of the Released Claims and she is fully entitled to give a full and complete release of all such Released Claims.

4. Warranty re Advice. Barch warrants that she has been fully advised regarding the terms of this Agreement and has agreed thereto. Barch hereby acknowledges that she has been represented by counsel throughout all negotiations which preceded the execution of this Agreement and that this Agreement has been executed with the consent and advice of said counsel.

#### G. DENIAL OF LIABILITY

By entering into this Agreement, it is understood that the County and the Released Parties do not admit, and to the contrary, expressly deny that they have breached any duty, obligation or agreement, or engaged in any tortious or wrongful activity, or that they are liable to Barch or any other Person, or that



any injuries, damages or harms of any kind have been sustained by Barch.

#### H. NOTICES

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered personally or mailed, postage prepaid, by first class mail to the undersigned persons at their respective addresses as set forth below.

##### Counsel for Barch:

Stephan C. Williams  
1615 Bonanza Street  
Suite 211  
Walnut Creek, CA 94596

##### The County and the Released Parties:

Silvano B. Marchesi, County Counsel  
Janet L. Holmes, Deputy County Counsel  
651 Pine Street, 9th Floor  
Martinez, CA 94553.

#### I. ENTIRE AGREEMENT

This Agreement supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the Parties with respect to settlement. The Parties acknowledge that no representations, inducements, promises or statements, oral otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein and further agree that no other covenant, representation, inducement, promise or statement not set forth in



this shall be valid or binding.

**J. MODIFICATION OR AMENDMENT**

This Agreement may not be modified or amended except in a writing signed by counsel for Barch and counsel for the County and the Released Parties.

**K. CONSTRUCTION AND INTERPRETATION**

This Agreement shall be construed, enforced and administered in accordance with California law. The drafting and negotiating of this Agreement have been participated in by counsel for each of the Parties, and any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applied to the interpretation of this Agreement.

**L. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

**M. EFFECT OF AGREEMENT**

This Agreement is binding upon and shall inure to the benefit of Barch, the County, the Released Parties and their respective Departments, Boards, officials, agents, attorneys, managers, employees, representatives, officers, directors, partners, principals, divisions, indemnitees, parent companies, subsidiaries, affiliates, associates, consultants, assigns, heirs, predecessors and successors in interest, trustees, shareholders and any trustee in bankruptcy or debtor in possession.

MAR. 20. 2007 11:26AM 25 3: CCC RISK MANAGEMENT-RA COSTA CTY COUNSEL

NO. 068 P. 2009

N. MISCELLANEOUS PROVISIONS

The headings of the sections, paragraphs and subparagraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

O. DISMISSAL OF CLAIMS AGAINST THE COUNTY AND THE RELEASED PARTIES

Within 10 days of execution of this Agreement by the Parties, Barch shall file or caused to be filed in the Action a Request for Dismissal With Prejudice in the form provided in Exhibit A to this Agreement.

WHEREFORE, the undersigned acknowledge and agree to the terms of the Agreement.

For the County and  
the Released Parties:

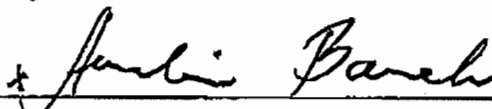
DATED:

By:

  
Sharon Hymes-Offord, Asst. Risk Manager, for the  
County and the Released Parties

DATED:

By:

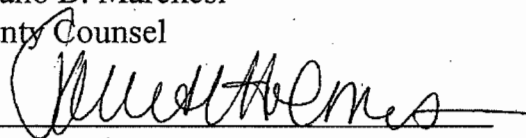
  
Aurelia Barch

APPROVED AS TO FORM BY COUNSEL:

Dated:

Silvano B. Marchesi  
County Counsel

By:

  
Janet L. Holmes  
Deputy County Counsel  
Attorneys for Defendant  
CONTRA COSTA COUNTY

Dated:

Law Offices of Stephan C. Williams

By:

  
Stephan C. Williams  
Attorneys for Plaintiff Aurelia Barch